IN THE HIGH COURT OF BOMBAY AT GOA
****

SECOND APPEAL NO. 6 OF 2003

Dr. Antonio Filipe Clovis
Pinto, r/o St. Agostinho
Ward, Santa Cruz, Goa 403 005. ... Appellant.

Versus

Shri Antonio Gomes,
(since deceased through
legal heirs):

(a) Mr. Minguel Gomes and his
wife, r/o House No. E-172,
Primeira Bairo, Cambodi,
Santa Cruz, goa,

(b) Mrs. Conception (Conceicao)
Esteves and her husband,
c/o Jacob Esteves,
Bhuttem Bhat, Merces,
Goa, and

(c) Mr. Nicolau Gomes and his
wife r/o Cortalim, Goa. ... Respondents

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, advocate for the appellant.

CORAM : F. I. REBELLO, J.

DATE : 4th July, 2003

ORAL ORDER

The suit filed by the appellant was on the basis that the respondents were leased a house admeasuring 58 sq. mts.. It is the further case that the tenants/respondents encroached on their property by building an additional area of 17 sq. mts.. The trial Court on considering the evidence held that the appellant herein was unable to prove the encroachment and, consequently, dismissed the suit. An appeal came to be preferred. That Appeal came to be dismissed also by judgment and order dated 30th September, 2002.

Both the courts below have held that the appellant, apart from his bare statement, was unable to prove by any cogent evidence that there was any encroachment. The Appellate Court noted that the appellant had produced copy of survey plan Exh.P.W.1/B on what was the area of the house and also the certified copy of the survey plan Exh.P.W.1/D. The learned Judge then held that plan Exh. P.W.1/D is the same as Exh.P.W.1/B and that it was not possible to hold that the area of the suit house is 58 sq. mts. based either on Exh. P.W.1/B or P.W.1/D. Another witness examined on behalf of the plaintiff gave the area of the house as 10 x 12 metres, in other words 120 sq. mts.. For all these and other reasons, the case of the appellant that the respondents have encroached was disbelieved.

These are purely findings of fact. It cannot be said that the findings are perverse warranting interference by this Court.

2. It was then contended that one more relief was sought, namely permanent injunction, which has not been considered by the Courts below. Once the finding was recorded that the respondents herein had not made any extension or encroachment, the cause of action based on which the suit was filed and based on which the injunction was sought, would no longer subsist. For grant of an injunction, the appellant must show that either the respondents encroached or threatened

to encroach on additional property. That was not the case. The entire suit was based on the encroachment already done. In that light of the matter, I find no merit in this Second Appeal which is accordingly rejected.

F.I. REBELLO, J.

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